

## **SUPPORT TO PRIVATE ORGANIZATION EVENTS**

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### **I. Introduction.**

Many private organizations seek Army support for their events. The likelihood is that, if it has not happened already, at some point in your present job you will be asked to approve Army support to some event. You might even be asked to provide the support yourself.

Examples of such requests are: (1) The Technical Marketing Society of America (TMSA) requests that you speak about the Army approach to an acquisition issue at TMSA's next two-day seminar; (2) The Association of the United States Army (AUSA) offers you space at its next symposium for your command to set up a display concerning its future direction; and (3) the United Services Organization (USO) asks you to give a speech about the performance of soldiers in Operation Desert Storm at a local fundraiser.

While there are hundreds of possible examples of requests for support, the above examples are fairly representative for the purposes of this article. The answer for each example is "yes," we probably can provide the requested support, subject to the following.

## **II. Who's Doing the Asking and Deciding?**

Your first step is to determine who the players are to ensure that no one violates Federal criminal law or a punitive regulation.

The Request. In most cases, the individual requesting the support on behalf of the private organization should not be a current Federal officer or employee. A criminal statute (18 U.S.C. § 205) says that officers and employees may not act as agents for a non-Federal entity (NFE) before any part of the Federal government concerning a matter to which the United States is a party or has an interest. However, Congress recently enacted an exception to permit uncompensated representation of nonprofit cooperative, professional, recreational or similar organizations by Federal officers or employees where a majority of the NFE's members are Federal employees or their family members.

In addition, another specific criminal statute prohibits a former general officer or senior employee (SES) from acting as the requester if he or she left the Army within the last year (18 U.S.C. § 207(c)).

The Decision. Those participating in the decision to provide the support must not be officers, directors, employees, or active participants in the organization. It is a crime (18 U.S.C. § 208) for an Army officer or employee to participate in the decision to provide Army support, when that same officer or employee is also an officer, director or employee of the private

organization. By regulation, this same 18 U.S.C. § 208 prohibition applies to enlisted personnel.

Finally, any Army employee could violate a punitive regulation by participating in an official matter to which a private organization is a party, if the Army employee is an active participant in that organization, because this would create an appearance of a conflict of interest.

Participating in the decision includes much more than being the actual decision-maker. It includes the employees who investigate whether sufficient resources are available to provide the necessary support, those who make recommendations about providing the support, and those who provide a legal review of the request and recommendation.

Being an active participant in an organization involves a spectrum of possible activity where the answer is clear at either end, but there is a lot of gray area in the middle. For example, being a member, receiving the organization's publication, and attending the annual dinner does not make a person an "active participant." But, if this same person also helps arrange the annual dinner, he or she might well be an "active participant." Finally, if this individual also chairs the membership committee, he or she is definitely an "active participant."

In summary, current Federal officers or employees generally may not act as an agent for a private organization requesting Army support for their organization, although Congress has recently provided some leeway. And, those who are officers, directors, employees or active participants in the organization may not participate in the decision whether to provide the support.

### III. Can the Support Be Provided?

It depends. There are a number of criteria that the commander, director or supervisor, responsible for providing or not providing the support, must consider. They are set out in the Department of Defense (DOD) *Joint Ethics Regulation* (JER) (DOD 5500.7-R) paragraph 3-211:

1. No Interference With Performance of Official Duties or Readiness. We don't provide support if it will interfere with mission or impact on readiness.
2. Community Relations or Other DOD Interests are Served and It's Appropriate to Associate DOD/The Army With the Event. These criteria are really opposite sides of the same coin. The Army does not support private organization events merely because the organization is friendly to the Army and supports Army ideals or because the organization is composed of many retired officers. When we provide support, we are not supporting the sponsoring organization, as such; rather, we are supporting the organization's **event** because it is to our benefit and we expect to further some Army interest!

This "benefit" might consist of any one or a number of things, such as the installation being a "good citizen" and supporting local community activities; or taking an opportunity to give an Army perspective to an issue; or promoting the Army itself. However, the event must also be "appropriate" or we lose or diminish the benefit that we might expect. For example, it

would be inappropriate for an Army installation to support a local event sponsored by an organization that excludes women and minorities from its membership.

3. Event is of Interest and Benefit to Local Civilian or Military Community as a Whole.

If you get this far in the analysis (no mission interference, DOD interest, appropriate), this criteria will be easily met.

4. Willing to Provide Same Support for Similar Events. Again, we are not supporting the organization when we provide support to one of its events. Therefore, we should be willing and able to support comparable events sponsored by similar NFEs.

The operative terms here are "comparable" and "similar." Perhaps you authorized support to an AUSA program to assist soldiers transition from military status to civilian life. This support consisted of use of the post theater, security, and posting the availability of this program to soldiers. This does not mean that now you must also provide the same support to an insurance company which wants to sell soldiers an insurance product to replace the Survivor Benefit Plan, or to a company that wants to "pitch" a course which teaches how to repair televisions. However, you would be expected to provide comparable support to The Retired Officers Association (TROA) for a presentation to assist soldiers write resumes and market themselves for civilian employment.

5. Not Restricted by Law or Regulation. Even though all the criteria are otherwise met for providing the requested support to the event, there might be other laws or regulations that restrict the support being requested. There are special laws and regulations governing the use of vehicles, aircraft, animals, real estate, utilities, personnel, etc. In some instances, there are special rules on the loan of certain types of equipment. These laws and regulations must be complied with in the first instance.

6. No Admission Fee Beyond Reasonable Costs for Sponsoring the Event. This can be a two-sided problem. Have you noticed seminars or continuing education programs in which 50% or more of the lecturers are Army, other DOD and/or Federal personnel, and the price approximates similar events where there is no official Federal participation? We need to think twice before providing tax-payer funded support to a conference designed to make money. Likewise, commanders, directors and supervisors need to apply fiscal judgment when deciding whether to send an Army employee to a conference that charges top dollar to hear Army-provided speakers.

There have been conferences at which Army officials planned to speak where the cost of the two-day conferences, depending on the registrant, was \$700 to \$900, or even more.

(1) In one case, the Army Alternate Designate Agency Ethics Official (DAEO) advised the Army participants (speakers) that they should not provide the support as planned because the admission fee seemed "pricey." The Army was providing over 90% of the

presenters, and the sponsor had not provided any information about its pricing of the event. When the sponsor finally provided some information and significantly reduced the prices, the Army participants were advised that they could speak at the symposium if they were still interested in providing the support.

(2) In another situation, where the cost was \$1,100 for a two day conference, the sponsoring organization explained that it was for a relatively small group and the overhead was essentially the same as for a large audience, that it was paying for the travel expenses of a number of the presenters and that, while the NFE might make or lose a little money, it was basically trying to break even. The Army employees were advised that there were no ethical objections to their participation.

(3) In other cases, when the local Ethics Counselors did not receive satisfactory information and assurances from the sponsor concerning the cost of the event, the Army speakers withdrew their participation and support..

The rule is that, unless the DOD support is incidental, there will be no admission fee charged beyond that which will cover the reasonable costs of sponsoring the event (or at least that portion of the event supported by the Army). The only exception is charitable fundraising, and that assumes the event meets all the other requirements for DOD support.

Liberal application of common sense is required to deal with this requirement. In the first instance, neither you nor your Ethics Counselors are auditors and you are not required to look for "certainty" pursuant to acceptable accounting standards. You should also understand that, in addition to the direct costs of a conference (*e.g.*, the cost of the meeting room, liability insurance, printing and distribution of the brochure, *etc.*), there are overhead costs to be allocated to the event or some more ephemeral costs, such as risks of "no-shows," that must be taken into account. However, you should obtain some assurance from the private entity that its pricing policies comport with JER 3-211a(7).

Many times, the NFE will obtain "approval" from the DOD Assistant Secretary of Defense for Public Affairs for the event. This is not an endorsement, authorization for official temporary duty travel, or a requirement for DOD personnel or organizations to provide support. Rather, it is a finding of no legal objection to individual DOD component commands or organizations approving the attendance or participation of its employees in the event. This tells you that the event meets the criteria of JER 3-211a, to include that the charge is not unreasonable.

Thus, if the event has this DOD "approval," you know that someone has already reviewed the matter and does not consider the costs of attending the event as excessive. However, this does not mean that you must provide any requested support. You are still free to decide not to provide the requested support, whether you consider the event too expensive or any other reason. The situation should never happen where the employee expresses "relief"



when an Ethics Counselor advises him or her that the employee should not agree to speak at a particular event. This has happened numerous time where the employee really did not want to speak at a particular event, but felt compelled to do so! Remember, agreeing to this or any other support must be driven by the Army's needs and take into account other mission and readiness requirements.

Finally, if you are asked to support a fundraising event, all the above criteria apply, except that the non-Federal entity may charge more than the cost of the event. In addition, if the sponsor of the fundraising event is affiliated with the Combined Federal Campaign (CFC) and wants to solicit in the Federal workplace, it must first obtain Office of Personnel Management (OPM) approval.

One can summarize the criteria as follows:

1. Is there a true Army interest in providing the support?
2. Is it really worth it (are we getting "bang for the buck")?
3. Does some law or regulation prevent it?
4. Is the sponsoring organization making money off of the taxpayer-funded support?

#### **IV. Should the Support be Provided?**

The Secretary of the Army has issued blanket determinations that permit some Army employees to accept gifts of free attendance at some private organization events. One of his caveats has been:

My above determination and approval do not constitute an Army endorsement of [the organization or its event], nor are they Army approval for providing specific levels or types of support to the events. Approval for support to the events must be accomplished by the commander concerned pursuant to law, regulation, and appropriate resource management.

"Appropriate resource management" is important. It might be appropriate and fiscally responsible to expend a few thousand dollars for an officer to prepare and deliver a speech at a local symposium. However, expending tens of thousands of dollars in the support of the same event might raise congressional eyebrows unless the Army can produce sound analysis for this type of expenditure in support of a private organization event.

There is an additional consideration: how much support overall is being provided by the Army? By DOD? You might be the only speaker requested from your organization, but there might be another dozen Army/DOD speakers also participating. The overall support could reach

that "critical mass" where it is really an Army or DOD event. If the event and our participation is really that important to the Army, perhaps it would be better for the Army/DOD participants to get together and put on their own event and contract with a private organization to handle the details of arranging for and presenting the affair.

On the other hand, perhaps the event should be a joint effort because the subject matter of the event consists of scientific, technical or professional issues in which both the Army and the private organization share a mutual interest. In this type of situation, perhaps the Army should be co-sponsoring the event with the private organization. Co-sponsorship can result in the "best of both worlds" for both the Army and the private sponsor, and will be the subject of a future article.

## **V. Conclusion.**

You are encouraged to seek the advice and counsel of your Ethics Counselor in trying to determine whether you or one of your subordinates may or "should" participate in providing support to a private organization event.